

No. 1

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA TRANSPORTATION REGULATION BOARD

In the Matter of the Petition of
West Suburban Transportation, Inc.
for a Certificate of Public
Convenience and Necessity as a
Regular Route Common Carrier of
Passengers to Transport Passengers
from Points West of Interstate
Highway 494 in Eden Prairie,
Chanhassen, Chaska and Victoria,
Restricted to Points Along or
Within One Mile of Highway 5, to
Minneapolis-St. Paul International
Airport and Return, Restricted to
Eight-Passenger Vans.

FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge Richard C. Luis at the Office of Administrative Hearings in Minneapolis, on June 11, June 12, June 27 and July 23, 1986. The record in this matter closed on October 31, 1986,

James F. Finley, Esq., 1401 Silver Lake Road, New Brighton, Minnesota 55112, appeared on behalf of the Petitioner, West Suburban Transportation, Inc. Brent Wm. Primus, Esq., 432 Norwest Midland Building, Minneapolis, Minnesota 55401-2350, appeared on behalf of Protestant International Express Corporation. Samuel Rubenstein, ICC Practitioner, P.O. Box 5, Minneapolis, Minnesota 55440, appeared on behalf of Protestant Transportation Management, Inc.

Notice is hereby given that, pursuant to Minn. Stat, 14.61, and the Rules of Practice of the Public Utilities Commission, as applicable to the Transportation Regulation Board, and the Rules of the Office of Administrative Hearings, exceptions to this Report, if any, by any party adversely affected must be filed within 20 days of the mailing date hereof with the Transportation Regulation Board, Minnesota Administrative Truck Center, 254 Livestock Exchange Building, 100 Stockyards Road, South St. Paul, Minnesota 55075. Exceptions must be specific and stated and numbered separately. Proposed Findings of Fact, Conclusions and Order should be included, and copies thereof shall be served upon all parties. If desired, a reply to exceptions may be filed and served within ten days after the service of the exceptions to which reply is made. Oral argument before a majority of the Board may be permitted to all parties adversely affected by the Administrative

Law Judge's recommendation who request such argument. Such request must

accompany the filed exceptions or reply, and an original and five copies of each document must be filed with the Board.

The Minnesota Transportation Regulation Board will make the final determination of the matter after the expiration of the period for filing exceptions as set forth above, or after oral argument, if such is requested and had in the matter.

Further notice is hereby given that the Board may, at its own discretion, accept or reject the Administrative Law Judge's recommendation and that said recommendation has no legal effect unless expressly adopted by the Board as its final order.

STATEMENT OF ISSUE

Whether a certificate of public convenience and necessity as a regular route common carrier should be issued to West Suburban Transportation, Inc. for airport van service between the Minneapolis-St. Paul International Airport and Eden Prairie, Chanhassen, Chaska and Victoria along and within one mile of Highway 5.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. West Suburban Transportation, Inc. is a corporation formed by John and Patricia Getman, its sole owners, for the purpose of operating the service for which authorization is sought in this Petition.

2. During approximately four months prior to the commencement of the hearing, Patricia Getman operated a 1985 Chevrolet Beauville eight-passenger diesel-fueled van, carrying passengers for hire between the Minneapolis-St. Paul International Airport (MSP) and points along or near State Highway 5 in the communities of Eden Prairie, Chanhassen, Chaska and Victoria.

3. During the period of operation prior to the hearing, Mrs. Getman transported approximately 140 persons for a total fare of \$1,698.00

4. The plurality of passengers using Mrs. Getman's van service came from Kallestad Labs, a business located in the Jonathan Industrial Park in Chaska, and from patrons of the Chanhassen Inn.

5. The area proposed for service by the Petitioner is a two-mile wide "corridor" (one mile to the north and one mile to the south) along State Highway 5 between the intersection of Interstate 494 and Highway 5 in Eden Prairie to the western border of the community of Victoria in Carver County.

It is approximately 12 miles from the main terminal at MSP to the 494-5 intersection. It is approximately 15 miles from the intersection to the western end of Victoria. From west to east, the Petitioner seeks to serve portions of the communities of Victoria, Chaska, Chanhassen and Eden Prairie. The Getmans live in Victoria.

6. Carol Deaner is a member of the Victoria City Council. Victoria is a bedroom and farming community with a light industrial park. It has a population of approximately 1500 people. A 94-unit residential development is under construction adjacent to the "built up" area of the community. Victoria is not serviced by any bus lines but taxi service is available to all parts of the metropolitan area. Ms. Deaner has traveled between Victoria and the International Airport approximately twice a month during the last year, but has always used private transportation. Taxis charge approximately \$30.00 to \$35.00 one way for a single passenger from Victoria to MSP.

7. The Victoria City Council has passed a resolution supporting the granting of the certificate sought in this application. The principal reason the council supported this application is because the Getmans are residents of Victoria. There is no evidence as to the number of passengers that would use airport van service between MSP and Victoria.

8. Ms. Deaner has been refused limousine service between Victoria and the airport. Protestants International Express and Transportation Management both operate airport limousine services, but do not have regular route authority extending any farther west than Highway 494. They do have charter carrier authority on a statewide basis, and would be available for charter limousine service to Victoria, as needed. Ms. Deaner did not request a chartered limousine at the time "service" was refused.

9. John Siegfried is a restaurant owner in Chaska and currently serves as president of the Chaska Chamber of Commerce. Chaska is the county seat of Carver County, and has a population of approximately 8500 persons. Most of the population and commercial business activity in Chaska is located near the intersections of Highways 212 and 41, in the "old" portion of the community along the Minnesota River. That portion of Chaska is several miles south of the area proposed for service by the Applicant. The primary area proposed for service in this application within Chaska is the Jonathan Industrial Park, which contains over 30 businesses. A new industrial park is planned near Highway 5 in Chaska which will be approximately the same size as Jonathan.

Three different companies, each of whom is contemplating using approximately 30,000 to 40,000 square feet of business space, are currently investigating the feasibility of locating their operations in the new industrial park.

10. Approximately 2500 persons are employed at the various businesses located in the Jonathan Industrial Park. Mr. Siegfried has been informed by the personnel director of Kallestad Labs that the Petitioner's van service to the airport has had a "positive impact". Mr. Siegfried has no knowledge of the number of riders per week that would use the proposed service, and his testimony was not offered in his official capacity as president of the Chaska Chamber of Commerce. Mr. Siegfried is not a frequent user of the MSP International Airport.

11. Linda Annexstad is an administrative assistant at Kallestad Laboratories in the Jonathan Industrial Park in Chaska. Her employer requires frequent air transportation for its employees to other company locations around the United States. Ms. Annexstad is the person at the Chaska office who makes arrangements for transportation for Kallestad employees to and from the airport. The average monthly need for transportation to and from the airport to the company's location is between 14 and 21 one-way trips per month.

12. During the months of March, April and May, 1986, Kallestad Labs used Mrs. Getman's van service approximately 45 times. One reason Ms. Annexstad supports this application is that Mrs. Getman provides the "personal" service of meeting Kallestad employees and clients at the airport gate. For approximately one year before employing the service of Mrs. Getman, Kallestad Labs used the transportation services provided by the Chanhassen Inn. Taxi fare for a one-way trip between Kallestad Laboratories and the International Airport varies between \$28.00 and \$43.00. Ms. Annexstad has never made any inquiry regarding transportation to or from the airport with either Protestant.

13. Barbara Dacy is the city planner for the City of Chanhassen. Chanhassen has a population of 7,635 persons and is located along the border between Carver and Hennepin counties. Most of the community's population lives in Carver County. Two MTC bus routes run into Chanhassen, both of them terminating at the intersection of Highways 5 and 101. One route goes north to Excelsior and the other directly to downtown Minneapolis.

14. Most of the businesses in Chanhassen are within one mile of Highway 5. The community has two industrial parks--one of approximately 150 acres at the eastern edge of the community in Hennepin County, and another to the west of Highway 101 along Highway 5. Ms. Dacy estimates that there are between 100 and 200 businesses in Chanhassen. Since 1980, the community has added 1,800 jobs to its work force.

15. Ms. Dacy neither opposes nor supports the Petition of West Suburban Transportation, Inc. She is not familiar with present taxi or limousine charter services to and from the airport and Chanhassen. She is not familiar with the actual needs of the community in terms of frequency or number of trips per week or times of day of the various businesses in Chanhassen for airport transportation. She is not familiar with the nature and extent of operations conducted by either of the Protestants in the area, nor of any other carriers in the area.

16. Marge Friederichs is the executive vice-president of the Eden Prairie Chamber of Commerce. Ms. Friederichs is unaware of any airport limousine service to and from Eden Prairie. Approximately 315 businesses belong to the community's Chamber of Commerce. A number of those businesses would bring people into town for training and would require service to and from the airport.

17. Eden Prairie has a population of approximately 27,000. There are 1,600 businesses in Eden Prairie, approximately 1,200 of which are located within one mile of Highway S.

18. Apart from private transportation, the most common way to go between the airport and Eden Prairie is by taxi. Ms. Friederichs does not know how many people go back and forth to and from Eden Prairie business locations and the International Airport each week. She is also unaware of services offered by the Protestants. She has no knowledge of complaints regarding the Protestants or any other existing carriers.

19. Lawrence Zamor is the owner of the Chanhassen Inn, a 66-room motel located in Chanhassen. The Chanhassen Inn transports persons to and from the airport in a station wagon owned by the Inn, for a fee. The Chanhassen Inn

has no authority for providing such airport limousine service. The motel's vehicle makes approximately six trips from the airport to the motel and six trips in the other direction each week. Most of these trips are one-way with single passengers. The distance between the Chanhassen Inn and MSP is approximately 18.5 miles.

20. The Chanhassen Inn does not have a taxi license for the vehicle it uses to transport passengers to and from MSP. Mr. Zamor was not aware that any authority was required. The Petitioner has made payments to the Chanhassen Inn for referring passengers to West Suburban Transportation. Up until the time of the hearing, the total amount of such payments were approximately \$130.00. Mr. Zamor is generally unfamiliar with transportation services available to and from the airport outside of the motel's station wagon and Mrs. Getman's van.

21. Jean Zamor, daughter of Lawrence Zamor, is the manager of the Chanhassen Inn. Most of the Inn's customers who require airport transportation either use taxis or the motel station wagon. In February of 1986, the Inn started referring its guests to the services of West Suburban Transportation. Ms. Zamor is satisfied with the services that have been offered by Mrs. Getman

22. The Chanhassen Inn charges \$10.00, one way, for transporting persons from or to the airport and the Inn. Two or more persons pay a total of \$15.00 for the service, which is a fare designed to cover only the cost of the vehicle, Labor time is not compensated,

23. Ms. Zamor has made several attempts to arrange for taxi and limousine service to the airport. Suburban Taxi provided such service, Airport Taxi denied her service, and she has never succeeded in obtaining limousine service. The evidence does not specify whether the limousine service she asked for was for regular route carriage or for a charter service. The record does not indicate what Ms. Zamor told the limousine dispatchers with respect to the number of persons requiring service. Airport limousine dispatchers contacted for passenger pickup in areas outside of their regular route territory often refer the customers to local taxi services because the cost of chartering a limousine may be prohibitive unless enough passengers are involved.

24. The Chanhassen Inn resumed operation of its van in the late spring of

1986, just prior to the commencement of the hearing (for approximately three months, their station wagon was not operating and all passengers were referred to West Suburban). Ms. Zamor was unaware of any need for the Inn to seek any permit or authority to conduct its airport transportation operations with the station wagon, and Ms. Zamor believes that the Chanhassen Inn will continue to conduct such operations.

25. Protestant International Express Corporation, doing business as Minneapolis-Suburban Airport Limousine Service, has made a business contact at the Chanhassen Inn. This contact has not resulted in an extension of the Protestant's regular route authority into Chanhassen.

26. John Getman, husband of Patricia Getman and 50 percent owner of the petitioning corporation, is employed in the new product marketing division of Eaton Corporation. His office is at the corporation's hydraulics plant along

Highway 5 in Eden Prairie. He travels to and from the MSP International Airport on business approximately 30 times per year.

27. When Mr. Getman was transferred to Eden Prairie by Eaton, he stayed at the Chanhassen Inn for just over one year (from Spring, 1984 to August, 1985). While staying at the Chanhassen Inn, Mr. Getman was unable to obtain limousine service to the airport. There was no problem in obtaining taxi service for the same trip.

28. While staying at the Chanhassen Inn, Mr. Getman made two attempts to obtain airport limousine service. The first, a telephone contact, resulted in no pickup because Mr. Getman was informed that the limousine service would not pick him up at the Chanhassen Inn or at Eaton Corporation. In a personal contact at the airport, Mr. Getman asked to be taken to Victoria and was informed that the limousine service did not go to that area. There is no evidence establishing whether Mr. Getman's inquiries were for service pursuant to the limousine company's regular route authority or whether he had inquired as to the availability of a charter. Both of the above-described contacts were with Minneapolis Suburban Limousine Service, a division of Protestant International Express.

29. Approximately 20 persons in the marketing division at Eaton's Eden Prairie location travel by air, but Mr. Getman provided no details as to the number or frequency of travel or the need of such persons for service to and from the airport, or as to whether most or any of those persons were in the habit of using their own vehicles to travel to the airport.

30. Although taxi service is available from the airport through the western edge of Victoria, Mr. Getman does not believe taxi service is generally available from anywhere west of the Chanhassen Inn to the airport. He distinguishes the services proposed to be offered by the Applicant from those of a taxi in that West Suburban would make "customer-to-customer contact", that the vehicle he proposed to operate would be cleaner than taxis and that its service would be on time. The service intended to be provided is believed, by Mr. Getman, to be "more personalized" than that of a taxi company.

31. Mr. Getman has not tried to obtain taxicab service from west of the Chanhassen Inn during the last two and one-half years.

32. West Suburban intends to operate its service between 6:00 a.m. and 10 p.m. If the growth in business demand warrants, the company intends to buy other vans and hire other drivers.

33. At the present time, West Suburban is not in a position to service potential customers who want to be picked up within an hour of when another person has been picked up. West Suburban has no radio in its van, and uses an

answering service in order to receive customer calls. Mrs. Getman checks in with the answering service approximately every two hours. Therefore, a potential passenger could wait for up to two and one-half hours after calling West Suburban before being picked up.

34. The Getmans own the Chevrolet van which is the principal asset of West Suburban. They lease it to the corporation. Although the Getmans have a net worth of \$197,000, only \$15,000 is available as a reserve for expenses and deficiencies that may occur in the operation of the airport van service.

35. Patricia Getman is the person who would oversee operations of the airport van service proposed in this Application. She would be the primary operator of the Company's single van, as she has been to date, due to her husband's commitments in connection with his fulltime employment at Eaton Corporation.

36. Mrs. Getman attended two business colleges but has no baccalaureate degree. Between 1962 and 1973, she was employed as a financial analyst with companies in California and Connecticut. From 1975 to 1982, she was a financial officer and office manager for a General Motors dealership in Bridgton, Maine. Her business experience includes working familiarity with cash flow analysis, budgets, financial statements, and bookkeeping. She was also licensed as an insurance salesperson by the State of Maine. She has no direct experience in the transportation business.

37. Most (approximately 70 percent) of the 140 van trips between the airport and the area petitioned for service herein performed by Mrs. Getman have been single passenger trips. She has not driven to the airport without a pickup arranged in advance. Most of the trips she has made are arranged at least 24 hours in advance,

38. Although the van business is, at this time, under-capitalized, the Getmans are willing to advance approximately \$15,000 of their personal funds to the Company if needed. Mrs. Getman does not believe that one vehicle is adequate to fully support the airport van transportation needs of the communities named in the Application.

39. The original Application in this matter states that the Company will not operate on a fixed schedule. At the hearing, Mrs. Getman was unable to state whether or not she intended to operate on a fixed schedule,

40. Mrs. Getman intends to charge \$15.00 for a single trip for the first passenger, and an additional \$3.00 for each additional passenger taken to or east of the Chanhassen Inn. The rate for each additional passenger rises to \$5.00 for points beyond the Chanhassen Inn.

41. In determining her rate structure, Mrs. Getman assumes that the fare is based on a rate factor of 30 cents per mile. This mileage includes the cost of diesel fuel and maintenance, but Mrs. Getman was unable to provide evidence as to how much maintenance cost was assumed. In addition, she did not calculate wages because she does not pay herself. Although she believes that the business potential in the communities involved in the Application warrant the eventual purchase of three or four vehicles, no garage expense has been factored into the rate structure. In addition, the rate structure does not allow for promotional or advertising expenses. Workers' compensation expenses and depreciation expenses have not been factored into the rate structure by the Getmans.

42. Mrs. Getman holds a Class C driver's license (a Class B chauffeur's

license is required for airport van or limousine service) and has not taken
a
physical examination to establish her fitness to operate a van for hire.

43. When Mrs, Getman has taken passengers to the MSP International
Airport, she has returned empty between 70 and 80 percent of the time.

44. West Suburban has had a load factor (passengers per trip) of between 1.1 and 1.2 since commencing operations in mid-February of 1986. Mrs. Getman assumes that she needs to make 15 single trips a week (\$225.00) to cover her overhead. She is willing to wait for late planes if obligated to pick up arriving passengers.

45. The estimate of \$225.00 per week does not include as overhead expenses wages, insurance and workers' compensations costs, nor does it include depreciation expenses. Mrs. Getman acknowledges that, at present, her operating expenses amount to approximately 51 cents per mile. This figure does not include van payments or driver compensation. She acknowledges that the \$225.00 per week "break-even point" assumes only "current expenses" such as van lease payments, the answering service used by West Suburban, gas and oil.

46. During the four months of operation prior to the hearing, Mrs. Getman's airport van operation took in revenues of \$1698 and had checkbook expenses of over \$3,500. Her insurance costs of \$100 per month were paid out of another account, and she has not factored in van depreciation because she does not consider that to be a corporate responsibility.

When all of West Suburban's expenses not originally considered by Mrs. Getman on her estimate of \$225 per week as a "break even" point are taken into account, Mrs. Getman estimates that she needs \$482 per week in gross revenues to "break even". In order to attain that figure with a single van, passenger volume at the present rate structure would have to quadruple over the volume she was serving during the period of operation prior to the hearing.

47. William Dolan is the marketing manager for Minneapolis Suburban Airport Limousine Service, a branch of International Express Corporation. Mr. Dolan belongs to various local trade associations and spends much of his time contacting companies and organizations to solicit their transportation business and acquaint them with the services offered by Protestant International Express.

International Express has a charter rate for western Hennepin County of \$45.00.

48. As part of its marketing and advertising efforts, International Express runs yellow page advertisements, distributes brochures and makes organizational contacts in the West Suburban area. An example of such efforts is the solicitation of the business of the Chanhassen Inn by Mr. Dolan during the early months of 1986. While at the Chanhassen Inn, Dolan left brochures with Jean Zamor and discussed the possibility of the Protestant serving the

hotel and its customers. Ms. Zamor did not indicate to Mr. Dolan that the motel was transporting persons for hire through the use of its own vehicle.

49. William Anderson, a 22-year veteran of the transportation industry, is the general manager of Protestant International Express Corporation. He is responsible for the overall supervision of dispatching, promotion, maintenance, scheduling and other operations of the corporation, which also operates Minneapolis Yellow Taxi Company.

International has a van fleet of 35 11-passenger and two 21-passenger vans. The van operation employs over 200 persons. All of its drivers have Class B (chauffeur's) drivers licenses. All of the Company's drivers are subject to and have passed Interstate Commerce Commission physicals.

50. International Express has three general operations: (1) its regular route service between Minneapolis-St. Paul International Airport and points in downtown Minneapolis; (2) its suburban regular routes to and from the airport; (3) its charter business. During 1985, International transported 227,000 passengers on its regular routes and 37,000 passengers by charter. The Company holds charter authority from any point in the seven-county metropolitan area to any point in the state of Minnesota. Specifically, it has authority to transport persons in western Hennepin County to the airport pursuant to its charter authority.

51. International's suburban regular routes consist of specific stops on a regular schedule, including a route along Highway 100. Routes are run every half hour and the vehicles stop at each point (mostly hotels and business headquarters) where passengers have called for pickup.

The Company operates charters on a 24-hour-per-day basis. Charters are arranged through telephone contact in advance. Mr. Anderson or Mr. Dolan set up the details of most charters. A driver sitting in a limousine at the International Airport would not necessarily know about charters. If inquiries are made at the airport desk, the main office of the Company is contacted to arrange the details.

52. International Express updates its regular route authority by dropping accounts that fail to generate business, or that have gone out of business, and adding new business at points where it is felt the traffic volume would justify the addition of a stop. Once the Company feels that a new stop is generating sufficient business, application is made to the Transportation Regulation Board for the requisite regular route authority. Until that volume is reached, service to that particular point is handled under the Company's charter authority.

53. With respect to the proposed route of the Petitioner, it is Mr. Anderson's opinion that the route would not be viable unless it could support four trips per day with a vehicle load factor of 2.8 to 3.0 (24 fares per day). This is equivalent to a passenger volume of 600 per month. It is Mr. Anderson's further opinion that the four communities involved in this Application do not presently support or account for that level of demand.

Mr. Anderson disagrees with Mrs. Getman's testimony regarding the cost of

operating a viable transportation business. The current per mile cost for International Express is \$1.80. Mr. Anderson feels that Mrs. Getman's financial projections are grossly understated in terms of expenses because she does not include salaries or wages, workers' compensation costs and depreciation as major expense items, In addition, there is no allowance for marketing or advertising.

54. Mr. Anderson believes that the Highway 5 "strip" from Eden Prairie through Victoria will eventually be served by a regular route carrier, but only as an extension of an existing route. By itself, there simply is not the

traffic volume present to support regular route service at this time or in the foreseeable future.

55. Tommy Scallen is the vice-president of International Express. Mr. Scallen believes that the operation proposed by the Petitioner is "doomed to failure" because the revenues and volume of traffic necessary to sustain a viable operation do not exist in the Highway 5 corridor. Mr. Scallen believes that the Petitioner's proposed rates of \$15.00 or \$18.00 are non-compensatory. Existing charter and taxi rates are higher because they are based on actual historical costs of operations.

Scallen is concerned about the adverse image that would reflect upon his Company and the other existing carriers who currently provide taxi and/or charter services to the West Suburban area. Should the Application be granted and the business ultimately fail, the established carriers will bear the brunt of the complaints attributable to operation of the short-lived carrier. In addition, since an operation like the Petitioner's takes away the "cream" (daytime) business that otherwise would have gone to charters, the existing, 24-hour charter services are left with the less attractive, more costly operations during evening hours. The Protestants had similar experiences in the South and Southwest Suburban area when an airport van service, MSP Express, operated under an authority granted by the Board. When MSP Express ultimately went bankrupt, and existing carriers bore the brunt of complaints and lost revenues resulting from services that the short-lived Company had performed.

56. Gene Strehlow is the general manager of Protestant Transportation Management, Inc. (TMI). As such, he is responsible for the day-to-day running of Airport Limousine Service, a branch of TMI. Airport Limousine operates on a basic tariff of \$1.25 per mile.

57. Mr. Strehlow has 38 years of experience in the transportation industry. He believes that operating a limousine service requires considerable knowledge and experience. To his knowledge, his Company has never refused service to any customers in the Highway 5 "corridor" sought to be served by the Applicant.

58. TMI has 23 licensed vehicles to serve the area in question. It has no regular routes in the area, but has authority to offer and perform charter service. All of its vehicles are dispatched by radio. Like International

Express, TMI currently operates at about 50 percent capacity. It could provide charter service to the area in question without any additional expense or overhead that would not be covered by fares.

59. Scott Larson is a fulltime dispatcher for TMI at the MSP International Airport. The Airport Limousine Service operates seven days a week, 24 hours a day. Any requests received by the Company for transportation to the Highway 5 "corridor" are currently referred to Town Taxi Company. TMI receives approximately eight to ten fare requests per month for Eden Prairie, two to four for Chanhassen, a "couple times a month" to Chaska and "seldom" to Victoria.

60. Robert Janecek is the president of Transportation Management, Inc. TMI is the successor of Yellowbird, Inc., which in turn was a successor

corporation to St. Paul Yellow Taxi. TMI operates 167 vehicles. Like International Express, its response time to calls is currently 25 minutes or less .

Based upon his review of the financial information provided by Mrs, Getman, Mr. Janecek believes that the Petitioner underestimates the expenses which will be incurred in operating its proposed service. Janecek believes that the proposed operation would have to have four to five times the current volume of passengers without more trips in order to break even. He believes a load factor of 3 passengers per trip is needed to support a regular route operation in the area, and, based on his experience in the industry and knowledge of the communities involved, he believes that the area to be served does not generate that level of demand.

61. Since regular route carrier drivers are not allowed to work more than ten-hour shifts, Mrs. Getman will have to hire another driver to cover the hours of proposed service, and the wages for that driver have not been factored into her business expense estimates.

62. Within the 30-day period prior to Mr, Janecek's testifying in this matter (July 23), his Company had 10 to 15 requests to Eden Prairie, three to five to Chanhassen and Chaska, and none for Victoria. Service was provided by chartered limousine on all occasions.

63. Mr. Janecek has computed that the Petitioner's financial information regarding revenues yields an average charge per passenger per trip of \$12.11, He believes that charge is inadequate to cover the Petitioner's operating expenses

The fare for a Town Taxi trip from Victoria to the International Airport (27 miles) is approximately \$30.00. There is a Town Taxi driver who lives in Chanhassen. Town Taxi is a subsidiary of TMI

Pertinent Statutory and Regulatory Provisions

Minn. Stat, 221,071, subd. 1 (1984) states, in relevant part:

If the Board finds from the evidence that the petitioner is fit and able to properly perform the service proposed and that public convenience and necessity require the granting of the petition or a part of the petition, it shall issue a certificate of public convenience and necessity to the petitioner. in determining whether a certificate should be issued, the Board shall give primary consideration to the interests of the public that might be affected . . . and to the effect which the granting of the certificate will have upon other transportation services essential to the community which might be affected by the granting of the certificate. The Board may issue a

certificate as applied for or issue it for a part only of the authority sought and may attach to the authority granted such terms and conditions as in its judgment public convenience and necessity may require

Minn. Rule 7800.0100, subp. 4 provides as follows: "The term 'fit and able' shall mean that the applicant is

financially able to conduct the proposed business; that the applicant's equipment is adequate and properly maintained; that the applicant is competent, qualified and has the experience necessary to conduct the proposed business; that the applicant is mentally and physically able to comply with rules, regulations and statutes of the Commission."

Based upon the above Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Transportation Regulation Board has jurisdiction over the subject matter of the hearing.

2. Proper notice of the hearing was timely given, and all relevant substantive and procedural requirements of law or rule have been fulfilled and, therefore, the matter is properly before the Administrative Law Judge.

3. From the Petitioner's experience, knowledge of the regulations and financial condition, the Judge concludes that it is not fit and able within the meaning of Minn. Rule 7800.0100, Subp. 4.

4. There is no evidence upon which to base a determination about the maintenance and freedom from defects of the Petitioner's vehicles; it cannot be determined whether they are within the safety requirements prescribed by the Minnesota Department of Transportation.

5. A grant of the Petition herein would materially affect the financial ability of Protestants so as to jeopardize the availability of necessary transportation service to the public.

6. The public convenience and necessity of granting regular route airport van service to the communities of Eden Prairie, Chanhassen, Chaska and Victoria, along a corridor one mile to the north and south of Highway 5, has not been demonstrated on the record.

7. Any Findings of Fact more properly considered Conclusions are hereby adopted as such.

THIS REPORT IS NOT AN ORDER AND NO AUTHORITY IS GRANTED HEREIN. THE TRANSPORTATION REGULATION BOARD WILL ISSUE THE ORDER OF AUTHORITY WHICH MAY ADOPT OR DIFFER FROM THE FOLLOWING RECOMMENDATIONS.

It is the recommendation of the Administrative Law Judge to the Board that it issue the following:

ORDER

IT IS HEREBY ORDERED that the Petition of West Suburban Transportation,

Inc. for a certificate of public convenience and necessity as a regular
route
common carrier of passengers be and hereby is DENIED.

Dated this day of December, 1986.

RICHARD C. LUIS
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Taped.
Partial Transcript Prepared By Mary Ann Hintz, Court Reporter

MEMORANDUM

Public Convenience and Necessity

In New Ulm Freight Lines, Inc., RRCC 64/A-75-24 (4/29/79), a multi-factor test was used to determine public convenience and necessity under Minn. Stat.

221.071. Consideration of the following factors is appropriate: public need for the proposed service; the ability of existing carriers to meet that need; the effect on the existing carriers of a new grant of authority; whether the service offered provides improvements; whether traffic volumes are sufficient for additional carriers; and whether the new service will introduce desirable competition. The multi-factor test was reaffirmed by the Public Utilities Commission in GWNCO Transport, Inc., PC 113/A-81-1107 (1/29/83). All considerations of the multi-factor test must be balanced and no single factor is controlling.

After thorough consideration of the above-enumerated factors, the Administrative Law Judge has concluded that no current need exists for regular route common carrier authority for airport van-limousine service to the four communities involved in this Application along a "strip" one mile to the north and one mile to the south of State Highway 5. The evidence fails to demonstrate that this area generates a demand for such service sufficient to warrant the granting of regular route authority.

Public witnesses from the communities involved (Deaner, Siegfried, Dacy Annexstad, and Friederichs) failed to establish facts about the frequency and volume of need for transportation to and from the airport or the number of persons who would avail themselves of the Petitioner's proposed services. Only Ms. Annexstad, from Kallestad Laboratories, presented evidence of actual usage of West Suburban, and that evidence was only for one company which, in and of itself, fails to generate sufficient business to support the proposed service. The sum total of specific needs testified to on behalf of "unrelated" witnesses from the communities of Victoria, Chaska and Chanhassen

is approximately 15 trips per month (the amount testified to by Annexstad as to usage by Kallestad Laboratories).

The strongest evidence supporting the granting of regular route authority is that regarding the growth and pattern of growth in Eden Prairie. The community has a population of 27,000, has grown by 150 percent in population in the last decade, and has 1200 businesses within a mile of Highway 5. While Ms. Friederichs presented that information, which strongly implies the potential generation of a need for specific airport transportation services, she provided no evidence of current demand. The only evidence regarding demand from Eden Prairie was Mr. Getman's speculation that 20 people from Eaton Corporation needed to get to the airport and Protestant TMI's charter figures, which indicate that 10-15 charters have been run to Eden Prairie during the month prior to July 23. The proven volume is not enough on which to base a recommendation that regular route authority be granted, in spite of the community's population, growth pattern and the concentration of 75 percent of its 1600 businesses along or near Highway 5.

The testimony of Lawrence and Jean Zamor, who own and operate the Chanhassen Inn, is tainted by the fact that the Inn and the Petitioner depend on each other to generate business for themselves. This relationship is symbolized by the payments the Petitioner has made to the Inn for referring airport-bound guests to its service. In addition, the Zamors have been operating, for hire and without authority, their own airport "van" service with a station wagon owned by the motel. This illegal activity weakens their evidence supporting this Application. The volume of potential business generated by the motel, according to Mr. Zamor, is approximately 12 one-way trips per week, with most of the trips being taken by single riders. His evidence is unclear as to how many of such passengers are actually Kallestad employees who have been driven to the Inn.

Taken together, and calculated in a light most favorable to the Petitioner, the total monthly volume established on the record is approximately 80 trips (15 to/from Kallestad, 15 MTI charters and approximately 50 to/from the Chanhassen Inn). It is clear that existing authorized carriers, primarily Town Taxi and the charter limousine operations of the two Protestants, can meet that need. During the four months of operation prior to the hearing, Mrs. Getman transported an average of 35 of the 80 fares, a significant erosion of potential business that would likely have gone otherwise to the existing carriers.

The evidence fails to establish that potential airport van traffic volumes in the area sought to be served are sufficient to warrant the addition of another authorized carrier. The potential monthly volume of even 80 trips per month (\$1200-\$1400) is, by Mrs. Getman's own admission, far below the \$482 per week she needs to "break even" with her van. And, this computation presumes that the Petitioner would secure all 80 "fares", an unrealistic scenario given

the limited hours of operation and the deployment of only one vehicle.

There is no evidence, beyond the speculation of the Getmans, that the quality of service provided by their van and driver is an improvement over the Protestant's limousines and taxicabs. The fact that Mrs. Getman meets arriving passengers at their gate is a minimal "improvement" unrelated to transportation questions. At most, the services contemplated by the Petitioner provide a convenience and not a necessity. As stated in *In Re Minneapolis and St. Louis Railroad*, 297 N.W. 189 (1941), and as reaffirmed in *Monson Dray Line v. Murphy Motor Freight, et al.*, 107 N.W.2d 850 (1961), a showing of mere convenience does not establish convenience and necessity. In

Minneapolis and St. Louis Railroad, the Court stated that the statutory concept of "necessity" for a certificated service as a common carrier "contemplates a definite public need for a transportation service for which no reasonably adequate service exists", 297 N.W. at 192. Furthermore, "Mere convenience does not satisfy the statute. There must be both public convenience and necessity.". 297 N.W. at 193.

For the reasons stated above, the public convenience and necessity would not be served by the granting of the authority sought in this Application, based upon the evidence proven in the record.

Fitness and Ability

The Administrative Law Judge concludes that, based on the evidence before him, the Petitioner is not fit and able to properly perform the services it proposes in this Application. A comparison of the above-noted regulatory definition of "fit and able", when measured against the evidence in this case, leads to that result.

1. The record contains no evidence establishing that the Petitioner's equipment is adequate and properly maintained. No Department of Transportation safety inspection report was introduced. Mrs. Getman testified that the van was "new", whereas it had been driven 4,000 miles before the Petitioner even took possession, and an additional 7,000 miles during the four months of Company operations, Mrs. Getman was unaware of the safety and maintenance requirements, and the Petitioner's projected expenses did not budget money for maintenance,

2. The Petitioner's evidence regarding competency, qualifications and experience necessary to conduct the proposed business also contains weaknesses sufficient to support a conclusion that West Suburban has not proven that it meets the required standard. Mrs. Getman, the primary operator proposed for the van, has no experience in transportation. Her testimony regarding the financial aspects of the proposed operation demonstrates that she has not taken into account all of the factors necessary in operating a business providing transportation for hire. Minn. Rule 7800.5400A. requires any person driving for a motor carrier to obtain a chauffeur's (Class B) license to drive fare-paying passengers, but Mrs. Getman does not possess such a license. In addition, while she employed two other persons to drive her van when she was unavailable, there is no evidence that she made any inquiry as to their licensure or other qualifications. Finally, the Applicant operated this business illegally, without authorization, for four months prior to the hearing (February-May, 1986). This evidence either ignorance of the law and rules or dishonesty. Either trait calls into question the qualifications of the Petitioner.

3. Regarding the requirement that the Petitioner be mentally and physically able to comply with the rules and statutes of the Commission, the

record shows that Mrs. Getman is, as of this time, unaware of many of the requirements she must fulfill before a certificate can be issued to her business. There is no evidence that she or anyone she proposes to employ in

the operation of West Suburban has successfully passed a physical examination before a qualified doctor with the minimum requirements laid out at Minn. Rule 7800.5400E. These physicals should have been taken prior to commencing operations in February.

4. That West Suburban is financially able to conduct the proposed business has not been shown. Mrs. Getman admitted that the Company is undercapitalized at the moment. Although the Getmans have a net worth of \$197,000, the record shows that only \$15,000 of that is available to "prop up"

the van operation. And, as pointed out in the brief of counsel for International Express, Mr. and Mrs. Getman can "walk away" from the corporation's bills without being personally liable. At the time of the hearing, the corporation's debts outweighed its assets and it has been operating at a loss since its inception. The record establishes that the potential business volume in the area sought for service is too small to enable the Petitioner to turn a profit.

Mrs. Getman's testimony also revealed that she had not taken into account many basic financial obligations encountered by a van-limousine service, such as maintenance, wages, workers' compensation insurance and depreciation expense. The "glossing over" of such financial obligations calls into question both the mental fitness and financial ability of this Applicant. The discrepancy between Mrs. Getman's testimony revealing how little she knows about what will be involved in this business, if the certificate is granted when weighed against her background in finances and bookkeeping, is puzzling. too many questions remain in the Judge's mind for him to conclude that West Suburban has met its burden of proving that it has the financial ability to conduct the proposed business or that it is fit and able to properly perform the services proposed in its Petition.

General

Minn. Stat. 221.011, subd. 9 defines a "regular route common carrier" as a "person who holds himself out to the public as willing, for hire, to transport passengers or property by motor vehicle between fixed termini over a regular route upon the public highways."

The evidence in this case calls into question whether the service proposed by West Suburban is that of a regular route common carrier at all. While the Minneapolis-St. Paul International Airport is one terminus of the operation, the other terminus, or termini, are not known (except, presumably, that they do not extend beyond the western border of Victoria). The route proposed is anything but regular, as the van is proposed to be available to pick up anyone who calls for it within the mile-wide "strip" on either side of Highway 5. As the Protestants have urged, the service is much more akin to that performed by a taxi.

The fact that temporary authority was granted to the Petitioner by the

Board on July 16, 1986 is immaterial to the issue of whether permanent authority should be granted. Particularly immaterial are the representations made by the Applicant to the Board in order to obtain that authority, so long as such "facts" are not established on the record before the Administrative Law Judge. In that connection, it is noted that the temporary authority is for a four-mile wide "band" with Highway 5 at the center, as opposed to the two-mile wide "band" involved in this record. Also, the record before the Judge contains no evidence of support from United Telephone, Fluoroware or Eaton Corporation.

R.C.L.

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